Case and Comment
THE LAWYER'S MAGAZINE

POCKET EDITION Vol. 33, April-May, 1927; No. 2

Established 1894. Published by The Lawyers Co-operative Publishing Company. President, W. B. Hale; Vice-President, J. B. Bryan; Treasurer, G. M. Wood; Secretary, Ezra A. Hale; Editor-in-Chief, Henry P. Farnham. Office and plant: Aqueduct Building, Rochester, New York. Editor, Asa W. Russell.

Marriage and Divorce in the Philippines*

By F. C. FISHER, Former Associate Justice of the Supreme Court of the Philippine Islands

IT IS not surprising that although the Philippine Act establishing divorce has been on the books ten years but few divorces have been granted under its provisions and that in not one instance has the law been construed by the Supreme Court. Truly, the remedy is worse than the disease.

The present divorce law not only imposes such conditions as to make it practically unavailable to those who have occasion to invoke it, but it has made the situation worse than it was before its enactment. Before this astounding law was passed it was at least possible, under the more enlightened and humane provisions of the thirteenth century code of King Alfonso the Wise, for a husband or wife to obtain a judicial decree of separation from an unfaithful partner, and a dissolution of the community property, if any, without first having to send the defendant to jail; and it was not necessary for the injured spouse to give all of his or her property to the children in order to obtain relief. But as the law now stands the Philippine courts cannot grant a decree of judicial separation on any grounds whatever—it must be an absolute divorce or nothing. In the case of Valdez v. Tuason (40 Philippine, 943) decided March 16, 1920, the Philippine Supreme Court held that Act No. 2710 of the Philippine

Legislature, which provides that divorces shall operate to dissolve the bonds of marriage and defines the conditions upon which divorces may be granted, had the effect of repealing, by necessary implication, the former law under which a judicial separation might be granted.

For the poor there is no relief from these conditions. The deserted wife must struggle along as best she can. She cannot free herself from the bonds of marriage—bonds in every sense of the word—and if she breaks faith with her faithless spouse, the gates of Bilibid yawn for her. A man may see his erring wife sink step by step until she can sink no lower—but unless he is able and willing publicly to brand her as a felon, she continues to be his wife until she dies. He may be wholly blameless for her depravity —but nothing but her death will make it possible for him to remake a home. Theoretically, he may be entitled to a divorce; but, as a practical solution of the problem for the vast majority of men the law is worthless—it is a bitter mockery.

The belief is gaining ground among the Filipino people that the present law is wrong. At the 1925 session of the Philippine Legislature a law was passed by both houses, without opposition, repealing section 8 of the Divorce Law (Act 2710), which contains the requirement of the previous criminal conviction of the defendant. This very slight modification of the Draconian rigor of the statute was disapproved by the Governor-General. In his veto message, dated December 9, 1925, he said:

"After careful consideration, I have disapproved House Bill No. 756, as I am convinced that the proposed Act, facilitating as it does the obtaining of divorce, is unwise and undesirable. Everything should be done to build up and strengthen rather than weaken the integrity of the family, on which the stability of the State in a large measure depends."

Can it fairly be said that the integrity of the family is strengthened by a law which compels wives to endure without remedy the flagrant infidelity of their husbands; which compels an injured husband to consign his unfaithful wife to a felon's cell before he can free himself of her; which requires the innocent party to give all his property to his children in order to be free to remarry; and which inevitably foments illicit relations, illegitimacy, and collusive and fraudulent foreign divorces? Was not the partial amelioration of the harsh provisions of the existing law of divorce, slight as it was, which the Legislature attempted to introduce into it, a step in the right direction?

American and foreign residents of the Philippines and well-to-do Filipinos, in constantly increasing

numbers, seek elsewhere the relief they cannot obtain here. Wives from Manila go to Reno, live there six months, and then, upon the ground of non-support, incompatibility, desertion, or some other charge which grates less harshly upon the ear than the plain English for what in so many cases is the real cause, enter suit for divorce in the complaisant courts of Nevada. As a general rule the husband makes no defense whatever, but allows judgment to go against him by default, upon service of summons by publication. Occasionally he instructs a Reno attorney to enter an appearance for him and to answer, admitting the averments of the complaint, or making a perfunctory denial. In either case there is no real contest; the plaintiff's testimony is uncontradicted, and in due time she gets a decree of absolute divorce. Quite frequently the Nevada divorce is followed, after an interval of varying duration, by a Manila wedding —or even two. Both parties to the Nevada proceedings feel quite at liberty to remarry. They have been divorced, and the Reno court has solemnly declared the former marriage to be dissolved; hence they naturally assume that they are free. They take it for granted that any divorce is a good divorce, and that if a marriage has been declared dissolved in Reno the decree of dissolution must be good in the Philippines.

Is this belief justified? Are Philippine marriages, following Reno divorces, legally contracted?

The answers to these questions involve an understanding of the legal principle which, in American jurisprudence, underlies the power of our courts to dissolve marriages. This principle is that every sovereign or quasi-sovereign state has power to control by its laws the civil status of its domiciled inhabitants, whether citizens or aliens. This jurisdiction is exercised through its courts.

When a suit is brought to dissolve a marriage, it is not alone sufficient that the court has jurisdiction over one or even both of the parties—it must also have jurisdiction over the subject matter, which in a divorce case is the civil status of marriage. Jurisdiction over the subject matter, the civil status, depends upon whether the plaintiff or the defendant, or both, are domiciled inhabitants of the state. Jurisdiction over the person may be acquired by voluntary submission to the court; but jurisdiction over the subject matter can be conferred upon a court only by the legislature—it cannot be conferred by the consent or the mere acquiescence of the parties. In England, and in the States of the American Union, the law does not empower the courts to grant divorces to casual sojourners, or mere residents. Such divorces can be granted only to the domiciled inhabitants

of the State—those who form part of its body politic.

This leads to the inquiry as to what is meant by the term "domiciled inhabitant." The word "domicile" in law means one's permanent place of abode—the place where one has fixed his residence with no definite intention of leaving it. The domicile of origin is that which is acquired at birth. It is retained until another is acquired. To effect the abandonment of an existing domicile there must be choice of a new domicile, actual residence in the place chosen, and intent that it be the principal and permanent residence. 9 R. C. L. 555.

Now, let us see the effect of these theories in actual practice. In the case of native-born Filipinos, still resident in the Philippines, the domicile of origin continues to be the legal domicile. In the case of an American or a European who comes here to engage in business or practise a profession, intending to remain indefinitely (although not necessarily permanently) his domicile shifts to the Philippines. He may continue to be an American citizen or a British subject, as the case may be, but he is a domiciled inhabitant of the Philippines. If he brings a wife with him, or if he marries here, his domicile becomes the wife's domicile. 9 R. C. L. 543. By the accident of birth, in the case of the Filipino, and by voluntary adoption of domicile here, in the case of the American or the European, marital status is governed by the laws of the Philippine Islands as long as that domicile continues. The Filipino, the American citizen, and the foreigner are all equally subject to our law. The place of marriage and its laws on the subject are of no importance—the Philippine law applies to all its domiciled inhabitants. Our law, like that of England and the United States, does not recognize in this matter the continental theory of the personal statute.

Now, let us suppose that trouble arises in a Manila home, and that the Filipino wife or the American wife, or the British wife, decides she must have a divorce. The actual facts or the available evidence may not be such as to enable her to obtain a divorce under our law, but might be sufficient under the Nevada statute. The dissatisfied wife makes her way to Reno and consults a lawyer. He tells her that by the law of Nevada, as well as that of the other States of the Union, and of the Philippines, the general rule is that the domicile of the husband is the domicile of the wife; but that a wife who leaves her husband for good cause may acquire a domicile separate from his, so as to confer jurisdiction upon the courts of the State in which she may establish a new residence, to render a decree of divorce in her favor. He tells her that under the Nevada law it is necessary that she

reside in that State for at least six months, with the bona fide intention of making it her permanent home, before she can maintain an action for divorce in the courts of that State. So she becomes a member of the Reno divorce colony, and at the end of the prescribed period files suit against the husband (who has continued to reside in Manila, let us assume), alleging as the basis of her action incompatibility of temperament, desertion, cruelty, adultery, or whatever facts, necessary to make a case under the Nevada law, she is able to prove. She also alleges, as she must, that she is a legal resident of the State of Nevada.

Upon the filing of the complaint the time is fixed within which the defendant must appear and answer, or suffer judgment to go against him by default. As he is not a resident of the State notice of the summons cannot be served upon him personally within the territorial limits of Nevada, so service of process is made by publication, or it may be by actual service without the State, or by both methods. Upon the expiration of the time allowed for appearance and answer, if no appearance has been made, an order is entered, upon the application of the plaintiff, declaring the defendant in default. The case is called for trial and the plaintiff, by her testimony alone, or supported by such other evidence as she may have, makes proof of the facts alleged in her complaint, including the fact of her domicile and legal residence within the State of Nevada; and there being no contrary evidence, if the Judge believes the evidence adduced (which he usually does, at least in his official capacity), a decree of absolute divorce is entered.

If the husband sees fit to do so, assuming that he has heard of the proceeding, he may make his appearance within the time limited in the notice and file an answer, thereby submitting himself to the jurisdiction of the court. When the case comes to trial he may, if he wishes, contest the action and produce such evidence as he may see fit to submit; or he may do nothing after filing his answer. In the latter event the case proceeds, for all practical purposes, as if he were in default—it is decided upon the evidence offered by the plaintiff wife. If the defendant really desires to oppose the action, he produces such proof as he may have at his command and the case is decided upon the evidence of both parties. In the majority of such cases the husband voluntarily refrains from taking any action tending to defeat the wife's suit and allows her to get a divorce.

(To be concluded in the June-July-August number of CASE AND COMMENT.)

The Early American Bar

By NATHAN FRIEDMAN, Columbus, Ohio

THE legal learning of early American lawyers was not very profound. Patrick Henry studied law but one month before his admission to the bar, John Marshall about six weeks, and Alexander Hamilton, ten months.

Edmund Bohun, who was commissioned chief-justice of South Carolina in 1698 was not even a professional lawyer. John Dudley, a very prominent New York judge from 1785 to 1797, was a farmer and trader. In court he frequently expressed his determination never to read "any quirks of the law out of Coke or Blackstone." Stoughton, the first chief-justice of Massachusetts had absolutely no legal training whatever. The chief-justice of Rhode Island from 1819 to 1826 was a farmer.

We are told that some judges "were so shamefully ignorant and illiterate as to be unable to write their own names." To a large extent judicial positions were filled by laymen. With few exceptions the profession was recruited by pettifoggers, swindlers, tricksters and deported English barristers. Attorney-general Randolph wrote in 1688 lamenting "the want . . . of two or three honest attorneys (if any such thing in nature)." A contemporary tells us that of the lawyers in New York at the time "one was a dancing master, another a glover by trade and a third condemned in Scotland for burning the Bible and blasphemy."

The weak, discredited bar gradually increased in number and prestige.

The profession was a lucrative one. Henry Wansey, who travelled thru New England in 1794, wrote that "the best houses in Connecticut were inhabited by lawyers." McMaster writing of the same period says "Every young man became an attorney and every one did well." Noah Webster in his "Essays" (1787) speaks of the "rage for the study of law. From one end of the continent to the other, the students of this science are multiplying without number. An infallible proof that the business is lucrative."

Joseph Reed of Philadelphia, who had been at the bar but two years wrote in 1767 that he was making a thousand pounds a year. Crevecoeur will ill-concealed sarcasm wrote in his "Letters to an American Farmer" thus: "The most ignorant, the most bungling member of that profession, will, if placed in the most obscure part of the country, amass more wealth than the most opulent farmer with all his toil."

During the financial depression following the Revolutionary War, lawyers were overwhelmed with cases. While everyone was inactive, they were busy collecting fees and prosecuting cases against debtors in court. For this reason the indigent felt very bitter toward them. "They were denounced as banditti, as blood-suckers, as pickpockets, as windbags, as smooth-tongued rogues."

Resolutions were adopted in many legislatures throughout Massachusetts to abolish the order or at least restrain their influence. Crevecoeur expressed regret that our forefathers did not "prevent the introduction of a set of men so dangerous." Benjamin Austin, who wrote influential essays under the pseudonym, "Hones-

A Question of Delivery

The item in the last Case and Comment relating that a Western judge fined a man, who called a young woman a "chicken," the sum of her weight figured up at the market cost of chicken, leads a correspondent to send in the original version of the incident, which he localizes at a resort on Chesapeake Bay. He says:

As I have always heard the story it is as follows:

The practice of flirting had become so general with the young men who visited the Beach in the summer that the local authorities passed an ordinance making it a penal offense, for any young man to address a young lady on the beach or in the streets unless he had been formally introduced to her or was otherwise acquainted.

Not knowing of this ordinance, some vivacious young man, passing a rather attractive young lady, called to her, "Hello, chicken." She took offense at this remark and, learning that she could have him arrested, under the ordinance, had him brought before a local justice of the peace and charged with a violation of the ordinance.

Not having any defense, he pleaded guilty and threw himself upon the mercy of the court, whereupon the Judge asked the young lady her weight and she advised him that she weighed one hundred and twenty pounds. Turning to the young man he said, "Young man, chickens in this locality sell for twenty-five cents a pound and you will pay into the court this amount, multiplied by the young lady's weight."

The young man was taken back for a moment but, turning to the Judge, replied, "All right, your Honor, but I have then bought the chicken and she is mine. Can you deliver?"

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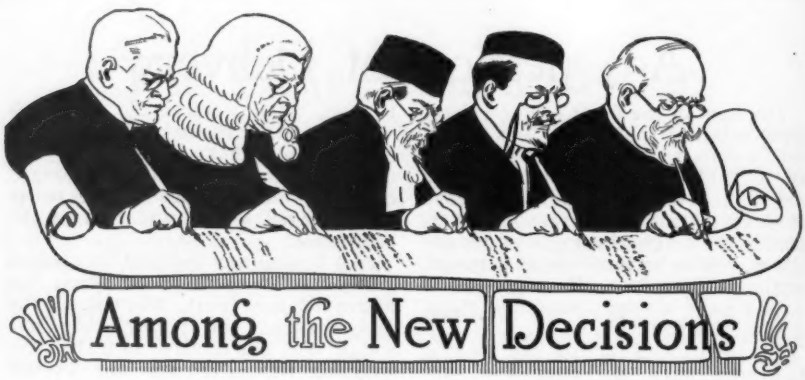
tus," attributed all the distresses of the people to the conduct of the lawyers.

The practice of early American lawyers could scarcely be less interesting concerned as it was with conflicting land grants, debts and mortgages, the horse and slave trade, trespass, assault and battery, and libel and slander suits. Rarely did cases like that of Peter Zenger arise, involving principles of constitutional law.

The United States was as truly a government of lawyers in 1789 as in 1926. Back in 1756 John Adams truly wrote that "the study of law is . . . an avenue to the important offices of the state." Of the 56 signers of the Declaration of Independence, 35 were lawyers. Of the 55 delegates in the Constitutional Convention, 33 were lawyers.

The major part of the deputies to congress were lawyers. Great Britain committed a grave error in arousing the American lawyers by the passage of the Stamp Act. A law which would assess duties on bonds, licenses, leases, deeds, mortgages, and all other legal documents would never be received favorably by the legal profession for it affected them too closely. John Adams felt "this execrable project was set on foot for my ruin as well as that of America in general."

The first law school established in America was opened in 1782 at Litchfield, Connecticut, by a Princeton graduate, Judge Tapping Reeve. Prior to this time legal education could be obtained only in the office of an established lawyer or at the Inner and Middle Temples, London.



'Tis but half a judge's task to know.—Pope.

Adverse possession — *tacking possession of grantor.* That one securing a conveyance of a specific parcel of real estate cannot tack to the period of his holding of an additional parcel the time of his grantor's holding thereof, to establish title by adverse possession, is held in Hanlon v. Ten Hove, 235 Mich. 227, 209 N. W. 169, annotated in 46 A.L.R. 788, on right of grantee to tack adverse possession by his predecessor of parcel beyond that called for by deed under which he claims.

Auctions — *effect of by-bidding.* Secret by-bidding upon a single parcel of real estate, which is all that is offered at an auction sale without reserve, is held to give the purchaser the absolute right to repudiate his contract in Osborn v. Apperson Lodge, 213 Ky. 533, 281 S. W. 500, which is accompanied in 46 A.L.R. 117, by annotation on effect on auction sale of by-bidding or puffing.

Automobiles — *infant operating motorcycle in violation of law as trespasser.* An infant operating a motorcycle on a public highway in violation of a statute which imposes a penalty therefor, and which by its terms is conclusively controlling on the punishment for its violation, is held not to be a trespasser in the sense that he is precluded from recovering damages for personal injuries negligently inflicted upon him by another, to which his youth in no way contributed, in Corbett v. Scott, 243 N. Y. 66, 152 N. E. 467, annotated in 46 A.L.R. 1064, on liability for injury to or by one operating a motor vehicle while under the age prescribed by law.

Bankruptcy — *filing secured claim as unsecured — effect.* The filing in bankruptcy proceeding of a secured claim as an unsecured one, is held to waive the security in Re O'Gara Coal Co. 12 F. (2d) 426, which is followed by annotation in 46 A.L.R. 916, on effect of filing secured debt as unsecured one.

Brokers — *interference with contract — liability.* That one is not liable to a real estate broker who has no exclusive contract to sell a parcel of real estate, for dealing directly with the owner after beginning negotiations with the broker, and thereby depriving the broker of his commission, is held in the Oregon case of Ringler v. Ruby, 244 Pac. 509, which is accompanied in 46 A.L.R. 245, by annotation on liability of one who deals directly with the owner for the

commission of a broker employed by the latter.

Case — *inducing breach of marriage contract — liability.* That one is not liable for inducing another to break his engagement to marry a third person is held in the Wisconsin case of Ableman v. Holman, 208 N. W. 889, annotated in 47 A.L.R. 440, on liability of third person for inducing breach, or preventing performance, of contract to marry.

Constitutional law — *equal protection — principles governing.* That the legislature cannot, under the constitutional provision of equal protection of the laws, prohibit the exercise on Sunday of businesses and occupations legitimate and lawful within themselves, which do not carry inherent reasons for special discrimination, while allowing all other similar occupations to do business on that day, is held in the Arizona case of Elliott v. State, 242 Pac. 340, which is followed in 46 A.L.R. 284, by annotation on constitutionality of discrimination by Sunday law or ordinance as between different kinds of business.

Constitutional law — *impairment of rights — extension of limitation period.* A Statute of Limitations enlarging the time within which an action may be brought as to pending cases is held not to be retroactive legislation and not to impair any vested right, in the California case of Davis v. Industrial Acci. Commission, 246 Pac. 1046, annotated in 46 A.L.R. 1095, on the validity and applicability to existing causes of action not already barred of statute enlarging period of limitation.

Contracts — *authority to sign contract.* Mere authority by a buyer to the seller's traveling salesman to put the "conversation or agreement in writing" and forward it to him, will not, it is held in the Maryland case of Reckord Mfg. Co. v. Massey, 133 Atl. 836, bind him by a letter written from the seller's office, purporting to be merely a confirmation on the part of the seller of the sale to the buyer, signed by the name of the seller with the salesman's name underneath.

The subject of one party or his agent, as the agent of the other party for the purpose of signing the contract or memorandum as required by the Statute of Frauds, is considered in the annotation which follows this case in 47 A.L.R. 195.

Contracts — *by telegraph — when effected.* Contracts may be negotiated by telegraph, and, when an offer is made by telegraph, an acceptance thereof in the same manner is held to take effect in Western Union Teleg. Co. v. Wheeler, 114 Okla. 161, 245 Pac. 39, when the telegram containing the acceptance is deposited for transmission in the telegraph office, and not when it is received by the other party.

Annotation on the time and place of consummation of a contract on acceptance by telegraph of offer, accompanies this case in 47 A.L.R. 156.

Contracts — *exemption — right to waive.* A stipulation in a note waiving the right of exemption is held to be void as against public policy, in Weaver v. Lynch, 79 Colo. 537, 246 Pac. 789, annotated in 47 A.L.R. 299, on validity of contractual stipulation waiving debtor's exemption.

Criminal law — *pardon — effect as restoration.* A pardon is held not to restore offices forfeited nor property or interests vested in others in consequence of conviction in the Washington case of State v. Hazzard, 247 Pac. 957, which is followed in 47 A.L.R. 538, by annotation on pardon as restoring license or other special privilege or office forfeited by conviction.

Damages — *loss of leg by child.* A remittitur of $10,000 is held to be required, in the Missouri case of Williams v. Fleming, 284 S. W. 794, from a verdict of $25,000 for an injury to a boy three and one-half years old, which required amputation of one leg above the knee, and the question

whether or not he can use an artificial limb successfully is left very doubtful under the evidence.

Annotation on excessiveness of verdict in an action by a person injured for injuries not resulting in death, accompanies this case in 46 A.L.R. 1220.

Eminent domain — *erroneous destruction of property — compensation.* When property is destroyed by a municipality under the mistaken belief that it is a nuisance, when in fact it is not, it is held in the Colorado case of McMahon v. Telluride, 244 Pac. 1017, annotated in 46 A.L.R. 358, to be taken for a "public use" within the meaning of the constitutional provision requiring compensation in such cases, and the loss to the owner must be made good.

Evidence — *contract to procure cancelation of municipal lease — validity.* A contract to secure from a municipality a cancelation of a lease of a municipal pier and obtain terminal facilities for the employer transportation company is held not to be against public policy nor illegal on its face, in the Virginia case of Old Dominion Transp. Co. v. Hamilton, 131 S. E. 850, and the burden of showing illegality is upon the employer in an action to recover compensation for services rendered, unless the infirmities appear from the plaintiff's own testimony.

Annotation on the validity of a contract to influence an administrative or executive officer or department, is appended to this case in 46 A.L.R. 186.

Executors and administrators — *commissions — securities held on margin.* An executor it is held in the Maryland case of York v. Maryland Trust Co. 133 Atl. 128, may inventory at their market value securities which his testator held on margin, even though they are located in other states, where they are pledged as security for the fulfilment of the contract, if by his diligence, care, and skill he disposes of them at a profit, and may receive his commissions on the value as inventoried.

Computation of commissions of executors, administrators, or trustees as affected by lien on or outstanding interest in the property, is the subject of the annotation which follows this case in 46 A.L.R. 231.

False imprisonment — *absence of mittimus — liability.* The imprisonment of another by a jailer without a mittimus or other lawful process is held to be illegal and to render such officer liable in damages to the one injured thereby in Clark v. Kelly, 101 W. Va. 650, 133 S. E. 365, annotated in 46 A.L.R. 799, on liability of jailer for false imprisonment.

Fraudulent conveyances — *protection of creditors of wholesale merchants.* The language of the Bulk Sales Law is held to be broad and comprehensive enough to protect the creditors of wholesale merchants, in the Arkansas case of Root Refineries v. Gay Oil Co. 284 S. W. 26, annotated in 46 A.L.R. 979, on applicability of Bulk Sales Law to wholesalers or jobbers.

Homicide — *duty to retreat — attack in place of business.* The rule that one attacked in his own house is not bound to retreat before taking life in self-defense is held to apply when he is attacked in his office or place of business in the Iowa case of State v. Sipes, 209 N. W. 458, which is followed by annotation in 47 A.L.R. 407.

Incompetent persons — *contract — annulment — failure to receive benefits.* One lending money in good faith upon community property in which an insane wife has an interest, with no notice of her incapacity, is held not to be bound to surrender his security in the Arizona case of Sparrowhawk v. Erwin, 246 Pac. 541, where the benefit would chiefly inure to her relatives, although she received little or no benefit from the loan.

Annotation on the validity and enforceability of a contract made in

good faith with an incompetent before an adjudication of incompetency, accompanies this case in 46 A.L.R. 413.

Injunction — *against pollution of stream.* A building company which turns the sewage from houses constructed by it into a stream so as to increase the pollution of it, to the injury of a lower riparian owner, is held to be subject to injunction in the Maryland case of Caretti v. Broring Bldg. Co. 132 Atl. 619, annotated in 46 A.L.R. 1, on injunction against pollution of stream by private persons or corporations.

Landlord and tenant — *sale of lease in bankruptcy proceedings — effect.* Sale of a lease by a trustee regularly appointed in either voluntary or involuntary bankruptcy proceedings, as a part of the assets of the bankrupt's estate is held not to violate a covenant in the lease that the lessee shall not assign without the consent of the lessor, in Miller v. Fredeking, 101 W. Va. 643, 133 S. E. 375, accompanied by annotation in 46 A.L.R. 842, on transfer in bankruptcy, or otherwise in interest of creditors or lien holders, as violating covenant in lease against assignment.

Municipal corporations — *abolition — right to property.* If a municipal corporation goes out of existence by being annexed to, or merged in, another corporation, and if no legislative provision is made respecting the property and liabilities of the corporation which ceases to exist, the corporation to which it is annexed, or in which it is merged, is held to be entitled to all its property, and to be answerable for all its liabilities in the Florida case of State ex rel. Johnson v. Goodgame, 108 So. 836, which is accompanied in 47 A.L.R. 118, by annotation on the rights and remedies of a creditor of a municipal corporation which is dissolved or combined with another municipal body.

Mortgage — *duty of mortgagee to account for rents.* One who takes possession of property as mortgagee is held liable to account for the rents for the benefit of junior lien holders, in Williams v. Marmor, 321 Ill. 283, 151 N. E. 880, even though he later acquires the equity of redemption by purchase.

The duty of a mortgagee to account for rents and profits or for use and occupation for the benefit of an owner of the equity of redemption or junior lienor, is considered in the annotation which follows this case in 46 A.L.R. 132.

Municipal corporations — *liability for injury to convict.* A municipal corporation is held to be liable in Hillman v. Anniston, 214 Ala. 522, 108 So. 539, for injury to or death of a prisoner sentenced to work upon its streets, resulting from the wrongful act of its agent in the course of the employment, notwithstanding the person causing the injury was a police officer having the custody of the injured person.

Annotation on liability for death of or injury to a prisoner accompanies this case in 46 A.L.R. 89.

Municipal corporations — *power to construct ice plant.* Charter authority to provide by taxation for the protection, benefit, and convenience of the city and its inhabitants is held to authorize the construction of a municipal ice plant for the convenience of the inhabitants of the city, in the Arizona case of Tombstone v. Macia, 245 Pac. 677, which is followed in 46 A.L.R. 828, by annotation on the power of a municipality to acquire and operate an ice plant.

Municipal corporations — *taxes — requiring municipality to levy — constitutionality.* A statute imposing upon municipal corporations the obligation to levy a tax to pay hydrant rentals, is held not violative of a constitutional provision declaring that "the legislature shall not impose taxes upon municipal corporations, or the inhabi-

tants or property thereof, for corporate purposes," in State ex rel. Metropolitan Utilities Dist. v. Omaha, 112 Neb. 694, 200 N. W. 871, which is accompanied in 46 A.L.R. 602, by annotation on the scope and effect of express constitutional provisions prohibiting the legislature from imposing taxes for county and corporate purposes, or providing that the legislature may invest power to levy such taxes in the local authorities.

Negligence — *duty to keep premises safe for prospective tenants.* The owner of a building containing flats for rent is held in the Massachusetts case of Serota v. Salmansohn, 152 N. E. 242, annotated in 46 A.L.R. 517, to owe the duty to prospective tenants entering the building to inspect the premises to keep in a safe condition the stairway leading to the common cellar where wood and coal are kept.

Parties — *right to enforce promise under seal.* That a third person cannot maintain an action on a sealed instrument to which he is not a party, is held in the Massachusetts case of Cavanaugh Bros. Horse Show v. Gaston, 152 N. E. 623, which is annotated in 47 A.L.R. 1, on the right of a third person to maintain an action at law.

Physicians and surgeons — *recommendation of other doctor — liability.* The mere recommendation by one doctor of another, is held not to render him liable for such other's negligence, in the Iowa case of Nelson v. Sandell, 209 N. W. 440, annotated in 46 A.L.R. 1447, on responsibility of one physician or surgeon for malpractice by another.

Proximate cause — *absence of lights on pier in street.* Failure of a municipal corporation to place proper lights on a pier carrying a railroad track over its street is held in Pugh v. Catlettsburg, 214 Ky. 312, 283 S. W. 89, not to be the proximate cause of injury to an automobilist who collides with the pier because of the glaring lights of another automobile which he meets when approaching the pier.

Liability for damage or injury by contact with structure above the surface of the street or highway, is the subject of the annotation appended to this case in 46 A.L.R. 939.

Proximate cause — *detention of goods by carrier — loss.* A carrier's neglect and wrongful detention of goods in its depot, after delivery thereof has been withheld by the carrier, without sufficient excuse, is the proximate cause of their subsequent loss by fire, and is held in Schaff v. Roach, 116 Okla. 205, 243 Pac. 976, to make the carrier liable for the loss as warehouseman, although the fire was not caused by its negligence.

The liability of carrier which negligently delays transportation or delivery for loss of or damage to goods from causes for which it is not otherwise responsible, is considered in the annotation which accompanies this case in 46 A.L.R. 296.

Sale — *conditional — effect of recording.* That an automobile financing company which permits a dealer to keep a new car in his salesroom after a pretended sale under a recorded conditional sales contract, the note representing the purchase price of which, and the contract securing the same, it has purchased, must bear the loss, where the dealer sells the car to an innocent purchaser for cash, which he retains, and becomes insolvent without satisfying the note, is held in Gump Invest. Co. v. Jackson, 142 Va. 190, 128 S. E. 506, which is followed in 47 A.L.R. 82, by annotation on the right of a purchaser from a party to a conditional sale as affected by actual or apparent authority in the party to sell the property.

Sale — *premature tender — effect.* A tender of goods to the purchaser, made before the contracted time of delivery, and acceptance refused by him on the sole ground of premature delivery, is held in Emerson Shoe Co. v. Neely, 99 W. Va. 657,

129 S. E. 718, not to justify refusal of the goods purchased if they are again tendered at the time the purchaser contracted for delivery, it being shown that the goods tendered comply with the contract of sale and purchase in all other respects.

The effect of a premature tender of goods which is refused by the buyer is considered in the annotation appended to this case, in 47 A.L.R. 189.

Sale — *subject to approval — condition.* Under a contract to buy skins to be approved by a person named, such approval is held to be a condition of buyer's performance unless waived or excused, in Van Iderstive Co. v. Barnet Leather Co. 242 N. Y. 425, 152 N. E. 250, annotated in 46 A.L.R. 858, on validity and effect of provision in a contract of sale making acceptance of goods conditional on approval by, or satisfaction of, third person.

Set-off — *of claim for tort in contract action.* That defendant in a suit to recover the contract price for laying a floor may recoup damages caused by the negligence of plaintiff's servant in throwing a lighted match upon the floor when saturated with inflammable fluid necessarily used in the work, which results in serious injury to the building by fire, is held in the Tennessee case of Mack v. Hugger Bros. Constr. Co. 283 S. W. 448, annotated in 46 A.L.R. 389, on character of claims available by way of set-off, counterclaim or recoupment in an action on a construction contract.

Specific performance — *effect of purchaser's knowledge of marriage.* The purchaser's knowledge that the vendor is married is held not to prevent specific performance of a contract to convey real estate with an abatement of price for the dower interest in case the wife refuses to join in the conveyance, in the Massachusetts case of Brookings v. Cooper, 152 N. E. 243, annotated in 46 A.L.R. 745.

Recent British Cases

Burglary insurance — *application by firm — nondisclosure of member's previous application.* That the failure of a member of a firm applying in the joint names of its members for burglary insurance to disclose, in answer to the question "Has any company declined to accept or refused to renew your burglary insurance," that while he was carrying on the business by himself on the same premises his application for burglary insurance had been refused, might properly be found to be a suppression, or concealment of a material fact which, under the terms of the policy, rendered it void, was held in Glicksman v. Lancashire & G. Assur. Co. [1925] 2 K. B. 593, which was affirmed by the House of Lords in [1927] A. C. 139. The question of avoidance of burglary insurance policy by concealment or misrepresentation as to refusal of other applications is covered in the annotation accompanying this case in 14 B. R. C. 236.

Carrier — *goods delivered to one wearing ordinary insignia of carrier's employees — liability for theft.* The Supreme Court of Canada in a recent case, Dominion Transport Co. v. Fisher Sons & Co. [1925] (Can.) S. C. R. 126, decided that a cartage company to which the owner of merchandise had telephoned requesting it to send for merchandise to be shipped, was not responsible for the theft of such goods by one who borrowed the cap and apron of one of its employees and obtained from him the use of one of its wagons, carried the merchandise away and converted it to his own use. Appended to this case in 14 B. R. C. 154, is an annotation dealing with the liability of a carrier for theft of goods delivered by a shipper to one falsely representing that he was carrier's employee.

Garage keeper — *stipulation against liability — negligence of employee.* It was decided by the English Court of Appeals in Rutter v. Palmer [1922] 2 K. B. 87 that if a common carrier would protect itself from responsibility for the acts of its servants it must use words which will include those acts which are negligent, because words which would suffice to protect it from liability for acts properly done by its servants in the course of their service may fall short of protecting it from negligent acts; but that if an ordinary bailee uses words applicable to the acts of the servant, inasmuch as he is not liable for their acts, unless negligent, the words will generally cover negligent acts, although such acts are not specifically mentioned, because otherwise the words will have no effect, and it was held that the liability of a garage keeper for the negligence of an employee was excluded by a stipulation that customers' cars are driven by his staff at customers' sole risk. The annotation appended to this case in 14 B. R. C. 109, deals with the liability of one with whom an automobile is left for sale for damage to the car while being operated by employee of the bailee.

A.L.R. Annotations in Volumes 46 and 47 Include These Subjects:

Accord and satisfaction — Accord and satisfaction by authorized indorsement and transfer of commercial paper by agent having no authority to compromise. 46 A.L.R. 1522.

Action — Insurer's right of subrogation against tort-feasor as affecting application of rule against splitting cause of action. 47 A.L.R. 536.

Advancements — Recovery of excess of advancement over distributable share in estate. 46 A.L.R. 1428.

Attorneys — Methods employed in collecting debts as ground for disbarment or suspension of an attorney. 47 A.L.R. 267.

Bankruptcy — Estate by entirety as an asset in bankruptcy. 47 A.L.R. 437.

Bonds — Contractor's bond as covering clothing, food, or lodging for laborers. 46 A.L.R. 511.

Bonds — Effect of affirmative provision in public contractor's bond excluding statutory conditions. 47 A.L.R. 502.

Bridges — Duty and liability as to lighting bridge. 47 A.L.R. 355.

Carriers — Demurrage as affected by displacement of cars by carrier. 46 A.L.R. 1156.

Charities — Gift for retirement or pension fund of teachers or other public officers or employees as a valid charitable trust. 47 A.L.R. 63.

Colleges — Grounds for ousting educational corporation of its franchise. 46 A.L.R. 1478.

Commerce — Foreign railway corporation as subject to service of process in state in which it merely solicits interstate business. 46 A.L.R. 570.

Constitutional law — Power of judiciary to compel legislature to make apportionment of representatives or election districts as required by constitution. 46 A.L.R. 964.

Contracts — Bankruptcy or insolvency of corporation as affecting its executory contract for the sale of its own stock. 46 A.L.R. 1172.

Corporations — Duty of tenant in absence of express provision, to occupy the premises, or to use them for the particular purpose indicated by words in the lease descriptive of their character. 46 A.L.R. 1134.

Corporations — Validity of obligation given by corporation for a personal debt of officer or stockholder. 47 A.L.R. 78.

Courts — Citizenship of ward, or of guardian, curator, or next friend, as test of diversity of citizenship for purposes of jurisdiction of Federal court. 47 A.L.R. 319.

Covenants — Acquiescence by purchaser of lot in restricted district in violations of restrictions as to some lots as waiver of right to insist upon it as to others. 46 A.L.R. 372.

Covenants — Condemnation proceedings pending executory contract for sale of real property as affecting rights of parties inter se. 46 A.L.R. 818.

Damages — Duty to minimize damages by accepting offer modified by party who has breached contract of sale. 46 A.L.R. 1192.

Damages — Excessiveness of verdict in action by person injured for injuries not resulting in death. (For the years 1916–1926.) 46 A.L.R. 1230.

Damages — Negligence in leaving cars where they obstruct view at crossing. 47 A.L.R. 287.

Damages — Strike benefits. 47 A.L.R. 282.

Divorce — Jurisdiction of state court over divorce suit by resident of United States reservation. 46 A.L.R. 993.

Divorce — Divorce or judicial separation as affecting marriage settlement. 47 A.L.R. 473.

Easements — Extent of rights in right of way acquired for power or light line. 46 A.L.R. 1463.

Eminent domain — Changing location of railroad or street railway in street or highway as a taking or damaging for which compensation must be made. 46 A.L.R. 1446.

Eminent domain — Measure of compensation in condemnation of right to pollute stream. 47 A.L.R. 43.

Eminent domain — Power of public utility commission to require railroad company to grant or renew leases or other privileges on its right of way. 47 A.L.R. 109.

Evidence — Custom as varying terms of marine policy as to place of stowage. 46 A.L.R. 951.

Evidence — Responsibility of owner of car for negligence of one in general employment of repair man or keeper of garage while getting or delivering car. 46 A.L.R. 840.

Evidence — Use in civil case of testimony given in criminal case by witness no longer accessible. 46 A.L.R. 463.

Garnishment — Garnishment of carrier in respect of goods shipped. 46 A.L.R. 933.

Highways — Establishment by user of highway running longitudinally on railroad right of way. 46 A.L.R. 893.

Highways — Liability of municipal corporation for injury incident to coasting in street. 46 A.L.R. 1434.

Highways — Validity of statute or ordinance forbidding running of automobile so as to inflict damage or injury. 47 A.L.R. 255.

Homicide — Right of self-defense by officer attempting illegal arrest. 46 A.L.R. 904.

Injunction — Payment of benefit as condition of injunction against an invalid contract or assessment for local improvement. 47 A.L.R. 248.

Involuntary servitude — Injunction against strike as violating constitutional provision against involuntary servitude. 46 A.L.R. 1541.

Judgment — Conclusiveness as to merits of judgment of courts of foreign country. 46 A.L.R. 439.

Labor organizations — Legality of rule of labor organization operating to discriminate between employers or localities. 47 A.L.R. 391.

Life tenants — Cost of property insurance as a charge against the life tenant or the remainderman. 47 A.L.R. 519.

Limitation of actions — When limitation commences to run against action to recover, or damages for detention of, property deposited without definite date for its return. 47 A.L.R. 178.

Logging railroad — Liability of operator of logging road or other private rail-

road for injury to person on track. 46 A.L.R. 1076.

Mandamus — Mandamus against municipality to compel improvement or repair of street or highway. 46 A.L.R. 257.

Mechanics' liens — Mechanic's lien for labor or material furnished under contract with vendor pending executory contract, for sale of property as affecting purchaser's interest. 47 A.L.R. 263.

Mortgage — Merger as to other than intervening lienor, on purchase of paramount mortgage by owner of fee. 46 A.L.R. 322.

Mortgage — Rights and remedies against mortgagee under deed intended as a mortgage, who defeats or impairs equity of redemption by conveying or encumbering property. 46 A.L.R. 1089.

Municipal corporations — Power to prescribe the manner or conditions under which slaughterhouse shall serve public. 46 A.L.R. 1486.

Negligence — Liability for damage to oil well by one employed to "shoot it." 46 A.L.R. 341.

Officers — Power of legislature to prescribe qualifications for or conditions of eligibility to constitutional office. 47 A.L.R. 481.

Parties — Joint liability of principal and agent or employer and employee for slander uttered by agent or employee. 46 A.L.R. 1506.

Partition — Interference by court with decision of commissioners in partition suit. 46 A.L.R. 348.

Public moneys — Constitutionality of retroactive statute providing compensation for personal injury or death of one not in service of state. 47 A.L.R. 431.

Railroads — Dogs as within contemplation of statutes as to duty of railroads as regards live stock. 46 A.L.R. 1536.

Sale — Misrouting as affecting duty of the buyer to accept goods. 46 A.L.R. 1120.

Street railways — Provision of constitution or statute making directors or officers of corporation liable for money embezzled or misappropriated. 46 A.L.R. 1164.

Succession taxes — Life insurance as affecting transfer or succession tax. 47 A.L.R. 525.

Taxes — Applicability of state license tax law to property or business of individual on land owned by Federal government. 46 A.L.R. 224.

Taxes — Priority over existing lien of statutory lien upon real property for personal property tax. 47 A.L.R. 378.

Trial — New trial or reversal because of discussion or consideration of personal experiences of jurors bearing on issues in civil case. 46 A.L.R. 1509.

Usury — Usury as affected by borrower's assumption of responsibility in respect of other debt. 47 A.L.R. 57.

Vendor and purchaser — Lien of tax collector's bond. 47 A.L.R. 512.

Wills — Cutting down estate created by absolute direction to testamentary trustee to pay over and deliver funds by subsequent provision, making different disposition. 46 A.L.R. 781.

Wills — Right of creditor of heir to contest will. 46 A.L.R. 1490.

Workmen's compensation — Citizen aiding in making arrest as within Workmen's Compensation Act. 47 A.L.R. 365.

Prominent Seattle Lawyer Passes on

Fred H. Peterson, who had practiced law in Seattle for over forty years, died in that city on March 1st. At one time he held the position of city attorney.

Mr. Peterson was a former contributor to CASE AND COMMENT, having written a number of valuable articles which appeared in its columns.

Uniting Bar Associations

IN the article on "Uniting Bar Associations," written by Joseph McCarthy, Esq., of Spokane, Wash., and which appeared in the November-December (1926) CASE AND COMMENT, the author, in referring to the "all-inclusive" plan of state organization stated: "The plan had its origin in North Dakota and strange as might appear its adoption was opposed practically if not unanimously by the bar of the state—the plan being a product of what was known as the 'nonpartisan league.' After some half dozen years of experience, however, the bar of North Dakota seem practically or unanimously in favor of its retention."

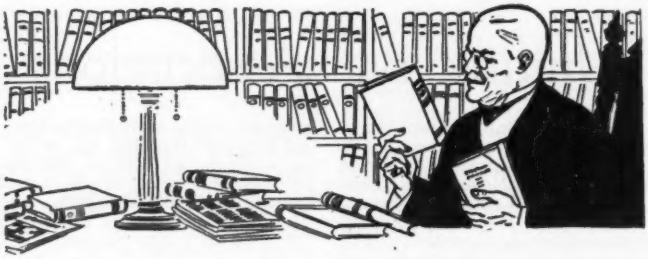
Hon. W. A. McIntyre, of Grand Forks, N. D., President of the North Dakota State Bar Association, takes exception to the statement concerning the origin of the plan. He writes: "That instead of the bar of the state opposing this plan, the bar of the state was wholly responsible for the plan and succeeded in getting it through the legislature. It was not opposed by any member of the State Bar Association, and it was not proposed by any member or leader of the nonpartisan league, and has no connection whatever with that organization. The plan under which our Bar Association is organized is the result of the combined thought of a number of the leaders of our state bar, and the plan arose, therefore, entirely within the bar, and its adoption by the state legislature was brought about solely by the efforts of the members of the bar." Mr. McIntyre adds that "the plan is working out very satisfactorily and we hear of no unfavorable comments among the members of the bar."

When Mr. McCarthy's attention was called to Mr. McIntyre's communication he wrote:

"If it appeared that the bar of the state was at first indifferent toward, or hostile to, the plan, and that the bar now favors it, such history or experience would seem the more to bespeak its merits. The purpose of the writing and the publication of the article was, of course, to aid in calling the attention of the bar of the country to the plan's desirability. Even if it were the fact that its adoption was at first aided or compelled by an unpopular political organization, we may all feel sure that the bar of the country, as a whole, will not in the least permit this circumstance to detract from its merits or to dim the honor and respect of worthy members of the North Dakota bar who may have opposed it.

But since the question of its history has been raised, it may not be amiss to observe that there is at least "a conflict of opinion" on the subject in North Dakota. An authority from the President's home state is submitted. In an address before the Montana State Bar Association at Great Falls, July 9th, 1926, Hon. Fred. J. Traynor, of Devils Lake, North Dakota, among other things said:

"When one of the leaders in the House during that session (1919) introduced and caused to be passed and become a law an Act creating a State Bar Board, which, among other things, required all practicing attorneys within the state to pay a yearly license fee of $15.00 as a prerequisite to the right to practice, he and his associates may have had in mind only the idea of doing that which was for the best for the bar and for the state. But such good intention met with almost unanimous resentment of the North Dakota Bar. . . . " There was a decided sentiment among many of the lawyers in the state to fight the license fee and the State Bar Board act. There were cooler and wiser heads in the then voluntary Bar Association of North Dakota who counseled taking advantage of what seemed to be unfavorable legislation in such manner that it might be made a benefit to the bar as a whole. . . . Accordingly, at the annual meeting of the State Bar Association in 1920 this (bar association) committee presented to the Association the draft of a bill for the organization of the Bar Association of North Dakota by legislative act. . . . This was approved by the Association and one of the leading Nonpartisan League Senators was induced 'by request' to introduce the bill in the Senate of North Dakota in the session of 1921 and I think, somewhat to the surprise of the Bar Association committee, passed both houses of the legislature, and was approved by the Governor."



New Books and Recent Articles

Whence is thy learning? Hath thy toil
O'er books consumed the midnight oil?—John Gay.

THE FEDERAL INCOME TAX. By Roland R. Foulke.

"THE LIFE OF THOMAS JOHNSON." Formerly an Associate Justice of the U. S. Supreme Court. By Edward S. Delaplaine.

AMERICAN COURTS: THEIR ORGANIZATION AND PROCEDURE. By Clarence N. Callender. (McGraw-Hill Book Co., Inc.)

The announced purpose of this book is to describe in simple, non-technical style the court organization in the state and federal jurisdictions and to explain the procedure used in handling the various types of litigation. References point the way to supplemental study of the questions considered in the text.

The author is a member of the Philadelphia Bar, and a Professor of Business Law in the Wharton School, University of Pennsylvania. He has set forth with great clarity the fundamental and more important matters connected with his subject.

JONES COMMENTARIES ON EVIDENCE. Second Edition. (Bancroft-Whitney Co., San Francisco.) Six volumes (1926) ..... $60.00 delivered.

This new and attractive edition of Jones on Evidence is an admirable working tool for the busy lawyer. It is based, like the 1913 edition, upon the practical and popular treatise by Burr W. Jones, sometime Professor of the Law of Evidence in the College of Law of the University of Wisconsin. The recognized excellence of the basic work assures the quality of the new Commentaries.

The editorial preparation of the new edition was entrusted to James M. Henderson, a professional law writer of ability and experience, who had the assistance of the publishers' editorial staff. While the thread of Professor Jones' original work has been retained, the analysis has been elaborated, new chapters have been added, and the text throughout has been revised and, to a very considerable extent, rewritten in the light of the later and more abundant authorities. The extent of the research work is indicated by the fact that the number of cases cited is almost double that in the first edition.

The editor's work shows not only industry in the collection of authorities, but intelligent reading of the cases and thoughtful classification and presentation of decided points. The abundant cross references throughout closely knit all related parts.

This work now stands as the great storehouse of information on the modern law of evidence as developed and received by the courts. As stated in the preface: "The application of a rule of evidence is often more troublesome than the rule itself. It is to the science of applying the law to fact settings that this work is chiefly directed."

A full and minute index adds to the practical value of the volumes, which with excellent typography and full dark blue Levant Koda-leather binding, with gold lettering, present a strikingly handsome appearance.

The "lowest terms" offer on R. C. L. is for a limited time only.

Findings

Penalty for a Protracted Jag.

The association went on record as being in favor of a law providing for taking away the license from drivers of motor vehicles found drunk for a period of one year.

—South Dakota Paper.

Did She Get the Position?

A firm of lawyers advertised for a stenographer, their ad running as follows: "The stenographer we require must be fast, absolutely accurate, and must have human intelligence. If you are not a 'crackerjack,' do not bother us."

One of the answers they received read thus:

"Your advertisement appeals to me strongly,—stronger than prepared mustard, as I have searched Europe, Aerope, Irope, and Hoboken in quest of someone who could use my talents to advantage. When it comes to this chin music proposition, I must say that I have never found man, woman or dicta-phone that could get first base on me,—either fancy or 'catch-as-catch-can.' I write shorthand so fast that I have to use a specially prepared pencil with platinum point and a water cooling attachment, a note pad made of asbestos, ruled with sulphuric acid and stitched with cat-gut. I run with my cut-out open at all speeds, and am, in fact, a guaranteed, double-hydraulic-welded, drop forged and oil tempered specimen of human lightning on a perfect thirty-six frame, ground to one-one thousandths of an inch. If you would avail yourself of the opportunity of a lifetime, wire me, but unless you are fully prepared to pay the tariff for such services do not bother me, as I am so nervous I cannot stand still long enough to have my dresses fitted."

A Question of Construction

An attorney was recently asked by a correspondent for the names of some of the "outstanding negligent lawyers in your city." He interpreted the request as meaning lawyers engaged in negligence cases, thus considerably reducing the list.

A Pre-Volstead Decision.

The jury through all the ages since Magna Charta has been retained as an essential part of the judicial system," observed Justice Wood in Poindexter v. State, 109 Ark. 192, 46 L.R.A.(N.S.) 517, 159 S. W. 197. "It is impossible to keep the fountains of justice clean and pure unless the jury is free from contaminating influences. Strong drink therefore should be neither for judges nor jurors, 'lest they drink and forget the law, and prevent righteous judgment.'"

His Wits Saved Him a Fine.

An English motorist calling at a friend's office in St. George street (in London, we presume), became so interested in their conversation that he overstayed his parking time and came out of his friend's office to see a bobby standing beside his car with a notebook in hand. An idea struck him. Instead of going to the car he dashed off to the nearest police station and arriving there breathless stated that twenty minutes previously he had left his auto in Rowland street while making a business call and on his return found that it had disappeared. His name and address were taken and an hour or so later

he received a telephone message from the police station that his auto had been found in St. George street. With tongue in cheek he thanked the police for their prompt work in recovering his property.

—Boston Transcript.

Makin' a Holler.

Brush, Colo., 6 June.

Mister Bourne, kere of the Ofallon Sup Co Dere Frend, I got the valve which i by from you alrite but why for gods sake doan you sen me no handle. i Loose to my customer shure ting. you doan treet me rite is my money not so good as the other fello. I waste 10 daze and my customer he holler for water like hell by the valve. you know he is hot summer now and the win he no blow the weel, the valve she got no handle so wat the hell goan do. you doan sen me the handle pretty quick i sen Her bak and I goan order some valve from the Henry Bitoff companee, booduy, your frend.

A—— S—— D——.

Since i rite theese letter i fine the dam handle in the bocks excuse me. —*Letter received by a Denver supply company salesman.*

— Literary Digest.

Revised Practice.

After a store had remained locked for several days, during the unexplained absence of the tenant, a newspaper states "the owner of the building even went so far as to start supplementary proceedings to gain possession."

Constitutional Right to Stand.

"A" was defending a negro for highway robbery; "A" and the District Attorney both obtained the floor, and the presiding judge requested "A" to take his seat, as the District Attorney had the Court's attention, "A" declined to sit down, and upon the third request, defiantly responded to the Court that "he had a *constitutional* right to stand."

The Judge answered that "the constitution did give him a right to stand,

but that instrument did not fix the place," and ordered the sheriff to take "A" to jail and place him in a room where there were no chairs and allow "A" the full benefit of standing on his constitutional rights.

Later "A" sent word to the Judge that "standing on his *constitutional rights* was very "onsatisfactory."

Still Alive

In Adams v. Industrial Commission, — Utah, —, 246 Pac. 364, the question was whether a painful condition of the shoulder of an applicant for workmen's compensation was due to disease or to being thrown from his wagon in the course of his employment. There was much testimony by medical experts and the court remarked: "It appears that not less than thirteen physicians have in one way or another participated in the case. Notwithstanding this, it appears that plaintiff is still alive, and, in the opinion of one of the physicians, plaintiff's condition will improve, provided there is no further treatment."

Whistling for Whiskey

The evidence shows, states the court in Gulf, C. & S. F. R. Co. v. Blake, 43 Tex. Civ. App. 180, 95 S. W. 593, that Whiskey was a mighty fine foxhound and well trained for his age, for he was hardly a year old when killed. When last seen alive he was standing lazily in dreamy houndlike meditation near appellant's railroad track. When next seen his head was off and his body mangled; for he had been struck and run over by a railway train near the place where he had been seen standing. There was no eyewitness to Whiskey's death, or, if there were, he never appeared or was called as witness on the trial. So we don't know who's to blame for the catastrophe—the appellant or Whiskey. The court found, as a fact, that the engineer negligently failed to whistle for Whiskey, but there is no evidence whatever in the record that such is the fact, unless it can be inferred that engineers never whistle for whiskey.

Judicial Notice of the "Bob."

In the recent case of State v. Leftwich, 42 Wash. Dec. 226, decided February 11, 1927, the Court held that bobbing a woman's hair was barbering and required a barber's license. In the course of the opinion, the Court said, at page 229: "It may be assumed that we are safe in taking judicial notice of the fact that in 1901 the general cutting of women's hair in the style of "bobbed hair" was not then common as it has since then become common."

Beat 'Em at Their Own Game.

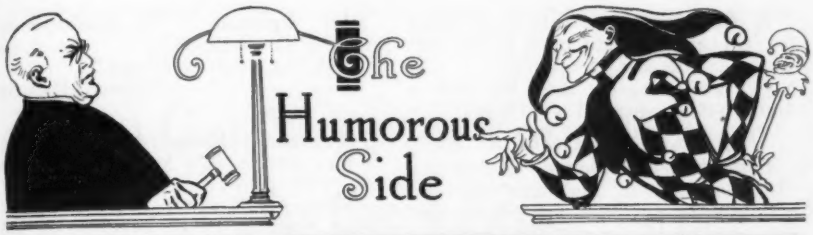
Does it annoy you to receive letters marked: "Dictated but not read?" The Nation's Business suggets the following comeback, or perhaps we should say sendback: "Dictated but not read by Mr. Blank. Signed in his absence getting his haircut by his secretary, Miss Dash. Stamp licked by Willie, the office boy, who also put it down the mail chute.
—Boston Transcript.

An Increased Rate.

Holden, P. J., in Commercial Credit Co. v. Shelton, 139 Miss. 132, 104 So. 75, remarks: Counsel for the appellee says in his brief:

"These concerns take advantage of the desire of poor people who really cannot afford automobiles to have one, and hold out to them, the bait of a cash and credit price, and the suckers bite."

We shall not take issue with counsel on this statement, and would add thereto that there seems to have been a large increase in the population of the country since the time when the sage proclaimed that "a sucker is born every minute."



Hang sorrow! care will kill a cat,
And, therefore, let's be merry—George Wither.

Safe and Sound.—

Stop and let the train go by,
It hardly takes a minute;
Your car starts off again intact,
And better still—you're in it.
—Boston Transcript.

Nonexistent. Young Solicitor: (To colored man): "William, who was your wife before you were married?"

William: "Boss, I didn't have no wife then."
— Exchange.

He Knew. "Do you understand mortgages, Bill?"

"Yes; the first is for the purchase of the car and the second is for the upkeep."
—Boston Transcript.

Lusty Language. Lady—"Isn't it wonderful how a single policeman can dam the flow of traffic?"

Boy—"Yes, grannie; but you should hear the bus drivers."
—London Tattler.

Watchful Waiting. "If you've spotted the fellow who stole your car why don't you get it back?"

"I'm waiting for him to put on a new set of tires."
—Boston Transcript.

A Modest Giver. "I have come to ask you if you will subscribe to this deserving charity."

"Certainly. I will give you this cheque now."

"You have forgotten to sign it."

"I know, I want to remain anonymous."
—Pele Mele, Paris.

Misunderstood. "Come, come, my man," said the would-be peacemaker, "you don't really want to fight. I can tell by your looks. Your face is too benign."

"Two be nine, is ut, ye dom butter-in! Take thot! O'ill let yez know Oim no hatchet face."
—Boston Transcript.

Stunning Alibi. Liza was on the witness stand.

"Are you positive," inquired the prosecutor, "that you know where your husband was on the night this crime was committed?"

"Ef Ah didn'," replied the witness firmly, "den Ah busted a good rollin' pin ovah an innercent man's haid, dat's all!"
—American Legion Monthly.

Cause of Delay. Grocer (suggestively)—You haven't paid that little bill of mine, yet.

Legislator (pensively)—No; it has only just passed the second reading.
—Boston Transcript.

A Miscalculation. Harry—I hear the captain has had hard luck. His wife has run away from him.

George—Yes, he took her for a mate, but she proved a skipper!

Complicated Evidence. Motor Cop (to professor of mathematics)—So you saw the accident, sir. What was the number of the car that knocked this man down?

Professor—I'm afraid I've forgotten it. But I remember noticing that if it were multiplied by fifty, the cube root of the product would be equal to the sum of the digits reversed.

—Boston Transcript.

Computation of Time. "Never borrow money from that man, he is a Shylock. In winter he takes 50 per cent and in summer 60."

"But why does he take more in summer?"

"Because the days are longer."

—Pele Mele, Paris.

Taken in. "Do you still owe that man anything on the second-hand car you bought from him?"

"Only a grudge."

—Boston Transcript.

A Plea for Clemency. Judge: "Although you are only just married you have beaten your young wife cruelly. Have you anything to say in your defence."

Accused: "No, your honor, except that if you send me to prison you will interrupt my honeymoon."

—P'st, Constantinople.

Infirmities of Age. "So your uncle died from the infirmities of age."

"Yes; the chauffeur who ran over him said poor old uncle seemed unable to hear, see or jump."

—Exchange.

An Opinion. "Is madness a ground for divorce?"

"No, only for marriage."

—Jugend, Munich.

A Clear Conscience. Mistress—Mary, you've left your fingerprints on every plate.

Mary—Well, mum, that shows I've done nothing to be afeared of the law.

—Boston Transcript.

Humiliating. "On what grounds did she sue for divorce?"

"Cruelty. Her husband compelled her to use a 1925 car."

—Exchange.

The Chances Against Him. Recently in the Superior Court of the State of Washington, Chance sued Winn. Winn lost and Chance won. Is it any wonder that people still talk of "practicing" law?

At a Price. "A lawyer is always willing to bear the burdens of others," observed the first man.

"Yes," commented the wisecracker, "but he will fix his own freight rates."

—Boston Transcript.

An Impressive Default. A distinguished eastern lawyer lately found himself in a little west Texas county-seat town. While walking around and viewing the place he became conscious of a great, rumbling volume of sound, evidently proceeding from the open windows of a large building about a square away. The sound rolled and reverberated and filled the air; it seemed to him like a gigantic human voice, amplified. Upon asking a bystander, if that were the court house, he was informed that it was. He said "there must be a great trial going on." The bystander said, "Oh no, that's only one of our prominent lawyers taking a judgment on default."

Attorney General John G. Sargent at His Desk in the Department of Justice.

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